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IN THE

Supreme Court of the United States

OCTOBER TERM, 1964

No. 461

KARL HALLER and MARIA HALLER,

Petitioners,

—v.—

UNITED STATES OF AMERICA,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

PETITION FOR REHEARING

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Petitioners respectfully request that this court grant a rehearing of its order, dated November 23, 1964, which denied the petition for writ of certiorari to the United States Court of Appeals for the Second Circuit, and that the court now grant certiorari, and in support of their petition for a rehearing, petitioners respectfully show:

First: The petition for writ of certiorari previously filed herein presented the following questions:

(a) Whether the Postal Agents without warrant of arrest, were authorized to arrest and take into custody the appellants herein, or, whether this arrest was a subter-

fuge and a pretext to hinder the lawful business of the appellants?

(b) Whether there was a reasonable ground for the exclusion of certain evidence which was allowed into the record by the trial judge over the appellants' objections denying them due process of law under the Fifth Amendment, and whether or not the appellants received a fair and impartial trial?

(c) Whether the Court of Appeals erred in affirming the lower court's ruling depriving the appellants of their constitutional rights under the Sixth Amendment, and under Rule 48(b) of the Federal Rules of Criminal Procedure?

(d) Whether the trial judge erred in the denial of appellants' motion for judgment of acquittal notwithstanding the verdict, or in the alternative for a new trial under Rule 29 of the Federal Rules of Criminal Procedure?

(e) Whether the trial judge erred in his charge to the jury in failing properly to instruct the jury that charges are not predicated by piling inference upon inference in order to grant the appellants a fair and impartial trial, or whether the failure of the trial judge to instruct the jury on this important element was prejudicial as to the appellants' rights and reversible error?

Second: The petition for writ of certiorari discussed the importance of the questions presented and its great impact upon the sound administration of justice, in view of the clear and express conflict of decisions among the circuits with respect to the question designated Number 3, which appears on page 3 of the petition for writ of certiorari and cited hereinabove. The prevailing or majority opinion in

its interpretation requires that the defendant demand trial or resist postponement, while on the other hand the minority opinion requires only that a motion be made to dismiss before trial so as to determine the period of time to be calculated so as to show a denial of a speedy trial. Arguendo, if we are to show only the latter facts, it is safe to assume that the delay in the trial of this case was in fact created by court delay and by the arbitrary and capricious delay of the prosecutor and that the petitioners herein did in fact assert their right to a speedy trial. The right to a speedy trial is very definitely a shield for the protection of the judicial safeguards of the petitioners and it is maintained that the test has been met by the petitioners and they should therefore be allowed the necessary latitudes in accordance with the democratic processes of our society.

Third: That our present knowledge is that Maria Haller did not participate in any funds acquired by Karl Haller, although the trial record is devoid of this contention.

Fourth: The petitioners stated that at the time of arraignment before Mr. Justice Edelstein, of the District Court of the United States for the Southern District of New York, Karl Haller gave his wallet over to Maria Haller, since he was detained pending bail; and Maria Haller was released on her own recognizance. That on the following day, when the said Karl Haller was released on bail, the wallet was returned to him intact by Maria Haller.

Fifth: That the said Maria Haller never participated in any plan proposed by Karl Haller, and his investors in a candy manufacturing plant.

Sixth: That the said complainants herein had been given a note for their investment, which included a twelve (12%) percent interest rate payment. No demand was ever made by the complainants for any payment thereof. (Note, N.Y. Law, holds any interest rate in excess of 6% to be usurious.)

Seventh: That the entire trial record is replete with judicial errors thereby causing an erroneous impression to be garnered by the jury, and this point is well taken by the respondent.

Eighth: That both petitioners herein were represented by the same counsel although their interests were conflicting, therefore, improperly represented.

Ninth: That the petitioner, Maria Haller, was not allowed to take the stand in her own defense by counsel, although he had promised her that she would do so, and proceedings have been commenced by the petitioner, Maria Haller, against her then counsel before the American Bar Assoeiation.

Tenth: Should the decision be allowed to stand on the record it could very well be an example of, "blind justice", whereby the innocent are made to suffer because of the improper administration of justice in the lower court.

CONCLUSIONS

For the reasons set forth in this petition for rehearing, as well as in the petition for writ of certiorari previously filed, rehearing and writ of certiorari should now be granted.

Respectfully submitted,

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Certificate of Counsel

Pursuant to Rule 58, I hereby certify that the foregoing Petition for rehearing is presented in good faith and not for delay, and is restricted to the grounds specified in paragraph 2. of Rule 58.

JAMES J. CALLY